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SUBJECT: Mbeki Panel To Recommend Hybrid Courts, Consultative
Conferences to Address Darfur Problems

¶1. (SBU) Advisor to the African Union (AU) panel on Darfur Abdul Kader Mohammed told diplomats that the panel's report would recommend use of the 2005 Declaration of Principles as a political framework for resolving the Darfur conflict; and resolution of security and land rights issues including a mechanism for establishing place of origin for internally displaced persons (IDPs.) The panel will recommend hybrid courts, composed of Sudanese and international judges, to prosecute individuals not indicted by the International Criminal Court (ICC), as well as a series of Darfur Consultative Conferences on for all stakeholders on IDPs, the process of reconciliation and reconstruction, and land and nomadic migration routes. The panel will make no recommendations regarding the ICC indictment. The panel has already briefed the Government of Sudan (GOS), which objected only to the hybrid court; panel members will themselves negotiate that issue with the GOS. The AU will engage the international partners in implementation of the recommendations. End Summary.

¶2. (SBU) On September 17, Abdul Kader Mohammed, Chief of the Darfur-Darfur Dialogue and Consultation (DDDC) process established by the Darfur Peace Agreement (DPA, advisor to the United Nations-African Union Mission in Darfur (UNAMID) and to the African Union (AU) panel chaired by former South African President Thabo Mbeki, briefed EU diplomats, and representatives of selected other countries including the U.S., Japan, Russia, China and India at Mbeki's specific request, about the report's contents.

Use of 2005 Declaration of Principles Urged

¶3. (SBU) The root cause of the Darfur crisis has been the legacy of neglect perpetuated by governments, Mohammed said; as a result, the panel is focused on "the Sudan crisis in Darfur." Peace must include the whole of Sudan, and not be monopolized by the two parties to the Comprehensive Peace Agreement (CPA.) The Mbeki report will recommend that the following steps be taken to resolve the Darfur conflict: 1) Cessation of hostilities in Darfur, to be verified by UNAMID; 2) Adoption of a political framework agreement. In the Mbeki panel's view, the 2005 Declaration of Principles (Note: The Declaration, signed by the Government of Sudan, the Sudan Liberation Movement/Army (SLM/A), and the Justice and Equality Movement (JEM) on July 5, 2005 in Abuja. End Note) is still valid and can be used. 3) Adoption of a permanent ceasefire, which the panel realizes will be more difficult to accomplish than the cessation of hostilities; and 4) Adoption of a global political agreement.

Land Rights Must Be Addressed

¶4. (SBU) The panel will also make a series of special

recommendations in the report: 1) Darfur must not be excluded from the 2010 elections. 2) A Darfur Consultative Conference (DCC), in which all Darfur stakeholders can participate, should be organized by the AU Special Mediator for Darfur, Djibril Bassole. Additional conferences should also be held on IDPs, on the process of reconciliation and reconstruction, and on land and nomadic migration routes. 3) The security environment both within and outside the internally displaced persons (IDP) camps must be improved. 4) The issue of land rights must be addressed. IDPs whose lands have been taken should have the right to return to their lands. A mechanism must be established to determine the location of IDPs' original homes. 5) The government should facilitate basic services to rebel-held areas, and establish benchmarks against which the provision of services can be monitored. 6) A peace stabilization fund must be established.

Not Whether, But How, To Do Justice in Darfur

15. (SBU) The panel believes it is not a question of whether but how justice should be done with regard to the violence that took place in 2003-2004 in Darfur, Mohammed said. While the International Criminal Court (ICC) has dominated the discourse, it is nonetheless only a court of last resort. The ICC's scope is limited; Special Prosecutor Ocampo told panel members that he anticipated prosecution of only six individuals, three from the government and three from the rebel groups. The ICC process will have to be accompanied by conflict management, and reconciliation processes to bring justice, Mohammed said.

16. (SBU) As a result, the panel will make a number of

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recommendations with regard to the Sudanese system of justice. The panel will recommend strengthening the justice system, in particular, by establishing a hybrid court to look at grave violations of the law by individuals not prosecuted by the ICC. The hybrid courts should be staffed by highly qualified judges from both Sudan and the international community, nominated via a mechanism established by the AU. The Sudanese government has already established its own special courts in all three of the states of the Darfur region, but none is yet functioning, Mohammed said. In addition, the panel believes laws on immunity should be amended, and Sudanese judges who have been dismissed should be reinstated. A Truth and Reconciliation Commission should be established, to include independent people of high integrity. Compensation should be provided for both individuals and communities.

Rigorous Process Legitimizes Panel Recommendations

17. (SBU) Mohammed stressed that the Mbeki panel's rigorous process has given legitimacy to its recommendations. The panel, established in April 2009, was to have completed its work by July but requested an extension through the end of September. The panel spent 39 working days in Darfur, and consulted with 2,700 persons, including rebel leaders, Darfuris in diaspora, and opposition parties, and conducted special consultations with the judiciary. All Special Envoys were consulted, as were major human rights organizations. Both the AU's Special Mediator for Darfur and the ICC Special Prosecutor were consulted. Testimony has been compiled in two volumes and will be publically available. At the end of the process, the panel convened stakeholders in focus groups to discuss recommendations. At all times, the panel was impressed by the civility of the discussion, Mohammed said.

18. (SBU) The report will go to the AU by the end of September, and will be considered by the Peace and Security panel at the head of state level in Nigeria. The government of Sudan intervened in the process only once, at the beginning, Mohammed said. President Mbeki made it clear that the panel's work was his own, and that he would brook no interference. The panel has already briefed the Sudan Government on its recommendations, and they objected only to the hybrid court, at which they were openly displeased, Mohammed said.

In general, however, Mohammed said he had never witnessed such open-mindedness from the Sudan government before. There was no obstruction of the process, and the government allowed the panel to bring in Darfur people from the smaller towns to participate. All in all, Mohammed concluded, a new attitude may perhaps be emerging that the panel's work can help consolidate.

Panel Makes No Recommendation Re ICC

¶9. (SBU) In response to questions, Mohammed told the group that the panel made no recommendations regarding the ICC indictment. Any issues related to possible deferral of the indictment will be between the AU and the UN Security Council. As to whether the Government of Sudan will accept a hybrid court, Mohammed said that the panel will itself negotiate that issue with the Government of Sudan.

Process Helped Rebel Movements Organize

¶10. (SBU) The Justice and Equality movement (JEM) remains uncomfortable with the concept of an inclusive peace process, Mohammed said; they continue to want to be the only ones at the table. To help the other movements gain cohesion, the panel provided them with questionnaires. The process forced the groups to discuss their responses, and to put them in writing. For the first time, Mohammed said, the rebel groups elected representatives from their number to speak. The panel was impressed with the responses, which were cohesive, reasonable, and forward looking. The rebels showed growing maturity, Mohammed said.

¶11. (SBU) The government has agreed that civil society should be allowed to participate in the conference, Mohammed told the group. At one time, the government viewed civil society as a stalking horse for the opposition parties, but that has now changed. To test whether civil society could participate productively in a Darfur Consultative Conference, the AU panel conducted a day-long workshop for selected participants. Some people even did power point presentations of their priorities. As a result, the panel is convinced that participation in a Darfur Consultative Conference

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will further consolidate their views. A standing committee has been formed to help them get ready for the conference.

¶12. (SBU) As to returns, the panel recommended that UNAMID create a conflict map of Darfur so that people will know which areas are at peace, and where development is possible. Returns must be handled comprehensively, Mohammed said. Tufts University, and well as the three universities in Darfur have already conducted studies of the issues surrounding returns. If the Darfur Joint Assessment Mission (DJAM) were to fund a conference on returns, it would be a venue for soliciting the views of all Darfurians, Mohammed said.

Implementation Heart of the Problem

¶13. (SBU) The problem of Sudan has always been implementation, Mohammed acknowledged, and if the AU panel's recommendations are to be successful, they will require both political and technical monitoring. As a result, the AU panel will enlist the support of international partners, and actively engage the GOS.

¶14. (SBU) Comment: The AU panel's recommendations for a hybrid court and consultative conferences have been an open *secret* for months. What was new in this briefing was word that the Mbeki report will make no recommendation regarding the ICC indictment of President Bashir; widespread speculation held that the panel would recommend the hybrid courts as an alternative to the ICC prosecution. Although the GOS continues to reject the hybrid court concept, most recently through the mouthpiece of the Sudanese Bar Association, Mbeki's promise to negotiate the hybrid court issue

directly with the GOS, coupled with Mohammed's hint that any discussions of possible deferral of the indictment would be between the AU and the UN Security Council, may indicate that the speculated compromise has not entirely been foreclosed.

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